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May 14, 2008

BY CM/ECF

The Honorable Mary Pat Thyng
United States District Court
844 North King Street
Wilmington, DE 19801

Re: Roquette Freres v. SPI Pharma, Inc., et al., C.A. No. 06-540-GMS (MPT)

Dear Judge Thyng:

On behalf of SPI Pharma, Inc. ("SPI"), enclosed please find a form of order implementing Your Honor's rulings in the April 28, 2008 teleconference.

SPI has made several attempts to secure plaintiff Roquette Freres' ("Roquette") agreement as to the terms of the proposed order, but those attempts have not been successful. In particular, Roquette objects to the language "MannitolTM HS in relationship to PharmaburstTM C1" in paragraphs 1(a) and 1(b) of the proposed order, and to paragraph 4, which provides that "[t]he parties may contact the presiding district judge in this matter to establish a schedule for the purposes of *Markman*, case dispositive motions, and trial."

SPI believes that the proposed order accurately incorporates the rulings made during the April 28 teleconference. Support for each of the order's provisions can be found in the transcript of the April 28 teleconference, as laid out below:

Provision of Proposed Order

1(a)
1(b)
1(c)

April 28 Teleconference Transcript Citation

Tr. 14:11-13, 26:13-14; 31:10-11
Tr. 30:17-19, 31:16-32:17
Tr. 32:19-33:1

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2(a)	Tr. 37:6-38:5
2(b)	Tr. 39:21
3	Tr. 41:13-14
4	Tr. 39:25-40:3

Additionally, SPI has made use of the Court's own form language where possible (*See, e.g.,* paragraph 2(a)). For these reasons, SPI believes the enclosed form of order is appropriate and accurate. Of course, counsel for SPI remains available to answer any of the Court's questions with regard to the proposed order.

Respectfully submitted,



Jeffrey T. Castellano (#4837)

Enclosure

cc: Clerk, U.S. District Court (by CM/ECF and hand delivery)
Julia Heaney, Esquire (by CM/ECF and hand delivery)
Douglas V. Rigler, Esquire (via e-mail)
Brian Murphy, Esquire (via e-mail)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROQUETTE FRERES,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-540 (GMS/MPT)
)	
SPI PHARMA, INC., <i>et al.</i>)	
)	
)	
Defendants.)	
_____)	

SCHEDULING ORDER

WHEREFORE on this ____ day of _____, 2008, the Court having conducted a telephone conference with the parties on April 28, 2008, and the Court having issued certain rulings during that telephone conference setting new scheduled dates;

IT IS ORDERED that:

1. **Fact Discovery**

a. Document Discovery: SPI Pharma, Inc. shall produce on or before May 30, 2008 all documents pertaining to Mannitol HS in relationship to PharmaburstTM C1, and all information regarding Mannitol HS in relationship to PharmaburstTM C1 that is of the type that SPI Pharma, Inc. previously produced in relationship to MannogemTM EZ.

SPI Pharma, Inc. also shall produce on or before May 30, 2008 all information regarding product, quantity purchased and price received, and all sales documents through April, 2008, pertaining to PharmaburstTM B1 and PharmaburstTM B2.

b. Depositions. Plaintiff may depose Arun Amin, Colleen Blackney, Paul LoPresto and Peter Dickinson concerning Mannitol HS in relationship to PharmaburstTM C1. SPI Pharma, Inc. shall designate one or more of those witnesses to testify on its behalf pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and shall identify each person who is prepared, capable and designated to testify regarding each topic set forth in Plaintiff's Rule 30(b)(6) Notice of Deposition at least forty-eight (48) hours in advance of the deposition.

c. Discovery Cut Off. All fact discovery in this case shall be initiated so that it will be completed on or before June 30, 2008.

2. **Expert Discovery**

a. Disclosure of Expert Testimony. For the party who has the initial burden of proof on the subject matter, the initial Federal Rule 26(a)(2) disclosure of expert testimony is due on or before June 30, 2008. The supplemental disclosure to contradict or rebut evidence on the same matter identified by another party is due on or before July 21, 2008. Along with the expert disclosures, the parties shall advise of the dates and times of their experts' availability for deposition.

b. All depositions of persons providing expert testimony under Rule 26(a)(2) of the Federal Rules of Civil Procedure shall be completed on or before August 15, 2008, unless the parties agree to extend such deadline.

3. **Deposition Practice.** Deposition length shall be governed by the Federal Rules of Civil Procedure.

4. Other Scheduling Matters. The parties may contact the presiding district judge in this matter to establish a schedule for the purposes of *Markman*, case dispositive motions, and trial.

UNITED STATES MAGISTRATE JUDGE